



# ERIE COUNTY WATER AUTHORITY

## INTEROFFICE MEMORANDUM

April 13, 2022

To: Jerome D. Schad, Chair  
Peggy A. LaGree, Vice Chair  
Michele M. Iannello, Treasurer

From: Karen A. Prendergast, Chief Financial Officer <sup>KAP</sup>

Subject: Request for Proposal for Financial Advisory Services

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In May of 2016, the Authority entered into a professional service agreement for Financial Advisory Services for three-years ending May 31, 2019. The agreement was extended by mutual agreement as outlined in the contract through May 31, 2022.

A Request for Proposal for Financial Advisory Services is on the April 28, 2022 meeting for your consideration. The scope of service includes,

- advising on debt and investment strategies,
- reviewing and updating relevant policies,
- assisting with bond issuances, and
- providing support for existing debt.

As financial markets and our capital improvement plans continue to evolve, it would be helpful to have a financial consultant periodically review our financial position and cash flow projections and provide guidance on maximizing interest income.

Financial Advisory Services are budgeted in unit 4015 – Cash Management, Line 51, Corporal & Fiscal Expenses.

cc T. McCracken  
M. Carney  
R. Stoll  
J. Tomaka

ERIE COUNTY WATER AUTHORITY  
AUTHORIZATION FORM  
For Approval/Execution of Documents  
(check which apply)

**Contract:** \_\_\_\_\_ **Project No.:** 202200071  
**Project Description:** Request for Proposals - Financial Advisory Services

**Item Description:**







<input type="checkbox"/> Agreement	<input type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Recommendation to Reject Bids		
<input checked="" type="checkbox"/> Request for Proposals			
<input type="checkbox"/> Other _____			

**Action Requested:**


<input type="checkbox"/> Board Authorization to Execute	<input type="checkbox"/> Legal Approval
<input type="checkbox"/> Board Authorization to Award	<input type="checkbox"/> Execution by the Chairman
<input type="checkbox"/> Board Authorization to Advertise for Bids	<input type="checkbox"/> Execution by the Secretary to the Authority
<input checked="" type="checkbox"/> Board Authorization to Solicit Request for Proposals	
<input type="checkbox"/> Other _____	

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

<input checked="" type="checkbox"/> Comptroller	<u></u>	Date: <u>04/14/2022</u>
<input checked="" type="checkbox"/> Chief Operating Officer	<u></u>	Date: <u>4/13/2022</u>
<input type="checkbox"/> Executive Engineer	_____	Date: _____
<input checked="" type="checkbox"/> Director of Administration	<u></u>	Date: <u>04/18/2022</u>
<input checked="" type="checkbox"/> Risk Manager	<u></u>	Date: <u>04/13/2022</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u></u>	Date: <u>04/13/2022</u>
<input checked="" type="checkbox"/> Legal	<u></u>	Date: <u>4/13/2022</u>

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority	<u></u>	Date: <u>04/18/22</u>
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**Remarks:** \_\_\_\_\_

**Resolution Date:** \_\_\_\_\_ **Item No:** \_\_\_\_\_

# ERIE COUNTY WATER AUTHORITY

Request for Proposals (RFP)  
For Financial Advisory Services  
ECWA Project No. 202200071



**Erie County Water Authority**  
**295 Main Street, Room 350**  
**Buffalo, New York 14203**

**Designated Contact Person:**  
Joyce A. Tomaka,  
Comptroller  
Email: [jtomaka@ecwa.org](mailto:jtomaka@ecwa.org)

# TABLE OF CONTENTS

Section 1. Invitation for Participation .....	1
1.1 Background .....	1
1.2 Purpose .....	1
1.3 Open Invitation.....	2
1.4 Scope of Services .....	2
1.5 Current Bond Issues .....	3
1.6 Designated Authority Contact Person .....	3
Section 2. Request for Proposals	
2.1 Submission Content Requirements .....	4
2.2 Required Copies .....	6
2.3 Timeline.....	7
2.4 Submission Deadline.....	7
2.5 Review and Evaluation.....	7
Section 3. Statutory and Regulatory Restrictions .....	8

## **SECTION 1. INVITATION FOR PARTICIPATION**

### **1.1 Background**

The Erie County Water Authority (the “Authority”) is an independent public benefit corporation created in 1949 by a special act of the New York State Legislature, codified at Title III Article V of the Public Authorities Law, to ensure a safe and plentiful water supply for the people and industry of Erie County. The Authority has been operating since 1953.

The Authority is financially self-sustaining, paying all operating expenses from revenues generated from the sale of water to 171,854 direct service, leased-managed and bulk sale customers. It is not an agency of New York State or Erie County. Instead, it is an independent local public authority performing governmental functions and responsibility for the treatment and distribution of 25 billion gallons of safe, clean, potable water annually to residential, commercial, and industrial customers in 36 municipalities located within Erie County and parts of Chautauqua, Cattaraugus, western Wyoming, and western Genesee counties, as well as the territories of the Seneca Nation of Indians.

### **1.2 Purpose**

The Authority continues to search for efficient means to reduce operating costs associated with the delivery of potable water to its residential and commercial customers. The Authority now requests information from qualified financial advisors providing financial advisory services.

In extending this Invitation for Participation (“Invitation”), the Authority is not obligated to purchase any services, or to reimburse any cost associated with the preparation of any submission made in response to this Request for Proposals (“RFP”). Any participants offering a submission understand the submission is for informational purposes only.

The Authority is seeking a three-year contract with an option (upon mutual consent) to renew the contract for two additional one-year periods under the same terms and conditions.

The Authority reserves the right, in its sole discretion, (a) to accept or reject, in part or in its entirety, any submission received as a result of this RFP, (b) to use the information, contained in any such submissions, to draft qualifications or specifications for future solicitations of proposals, or (c) to negotiate a service

agreement with qualified, experienced financial advisors.

### **1.3 Open Invitation**

This Invitation is open to all qualified, experienced financial advisors authorized to do business in the State of New York and providing financial advisory services for at least three years.

Any eligible, qualified, and experienced financial advisors submitting a proposal should be referenced in this RFP as a “Respondent.” Respondents may submit proposals to perform all, or part of the financial advisory services listed in ¶ 1.4 (Scope of Services).

### **1.4 Scope of Services**

The Authority is seeking the following financial advisory services:

- Informing the Authority of market conditions on an on-going basis by initiating contact regularly and notifying the Authority of activity;
- Evaluating the Authority’s debt position on an on-going basis. This includes actively monitoring the market and notifying the Authority when the market conditions are beneficial for the Authority to issue, refinance or redeem debt. The current Authority’s bond issues are outlined in ¶ 1.5;
- Advising the Authority on debt policy decisions, and planning and structuring of bond issuances based on the Authority’s capital spending requirements. This includes obtaining an understanding of the Authority’s legal and bond covenant requirements;
- Executing bond issuances, redemptions and defeasances along with Authority personnel and bond counsel;
- Providing the Authority with an arbitrage calculation when required;
- Providing the Authority with investment alternatives for all funds (See Exhibit A for the Authority’s Investment Guidelines);
- Provide reports on all activity to the Authority’s Commissioners upon request;

## 1.5 Current Bond Issues

The following is a list of the Authority's current bond issues:

- Series 2003F Bonds, a NYS Environmental Facilities Corp (EFC) deal with \$2,593,384 outstanding principal
- Series 2016 Bonds with \$21,245,000 outstanding principal
- Series 2018 Bonds with \$23,970,000 outstanding principal
- Series 2021 WIFIA Bond, a loan from the US Environmental Protection Agency (EPA)

## 1.6 Designated Authority Contact Person

This RFP imposes certain restrictions on communications between Authority personnel and the potential Respondents during the restricted period for the solicitation of information. No potential Respondent may contact any Authority personnel regarding this RFP or other matters relating to the subject matter of the RFP. Current financial advisors who are current financial advisors of Authority may have limited contact with the Authority's Comptroller and other personnel designated by the Comptroller. All other contact with Authority personnel is strictly prohibited and may be grounds to disqualify the offending Respondent's submission.

Questions that arise prior to or during preparation of submission by a Respondent must be submitted ***in writing by email*** to the Authority's designated contact person by May 13, 2022, as indicated in ¶ 2.3.

In the event it becomes necessary to revise any part of this RFP, addenda will be emailed to all Respondents who acknowledged, by email, receipt of the original RFP. In any submission, the Respondent must acknowledge receipt of any addenda, sent by email, prior to the Submission Date, set forth in ¶ 2.4.

The designated contact person identified below is the sole point of contact regarding this RFP from the date of issuance until the submission date:

Joyce A. Tomaka, Comptroller  
Erie County Water Authority  
295 Main Street, Room 350  
Buffalo, New York 14203  
Email: [jtomaka@ecwa.org](mailto:jtomaka@ecwa.org)

## **SECTION 2. REQUEST FOR PROPOSALS**

### **2.1 Submission Content Requirements**

**A. Title Page:** Showing RFP name, name of responding entity, address, telephone number, fax number, email address, website URL address, and the name of the contact person.

**B. Firm Overview:**

- Provide a brief history and general description of your financial advisory firm, including the following:
  - Place of incorporation,
  - Location of principal place of business and other offices or branches within New York State,
  - Size based on funds on deposit and lending capacity
  - Number of employees and credential financial advisors
  - Primary financial advisory services offered
- Identify the primary person(s) who would be responsible for managing the relationship with the Authority if the Authority entered a contractual or business relationship with Respondent, including the person's name, title, email address, and direct office phone number.
- Identify the specific services described within the Scope of Services, described in ¶1.4, for which the Respondent has offered services within its proposal.

**C. Relevant Experience and Expertise:**

- Provide resumes and credentials for professional staff, assigned to work with the Authority or who will have a key role in the services to be provided.
- Describe Respondent's experience in providing financial advisory services for governmental agencies, including a description of Respondent's understanding of the legal obligations for governmental agencies pursuant to the General Municipal Law, the Local Finance Law, the Public Authorities Law, and other applicable federal or state laws.



- Describe Respondent's experience in investing municipal bond proceeds and familiarity with U.S. Treasury arbitrage restrictions as they relate to the investment of the proceeds of municipal bonds.
- For the office responsible for services to be provided to the Authority, provide a list of the most recent and significant public or private relationships with which that office or branch may have had in the last five years with similar services to be provided to the Authority, as described in the Scope of Services in ¶1.4.
- Briefly describe any additional features, attributes, or conditions which the Authority should consider in selecting Respondent for financial advisory services.
- Provide sample copies of research material and other information on markets and the economy, which Respondent regularly provide similarly situated customers that are provided with similar services as requested by the Authority in its Scope of Services in ¶1.4.

**D. Third Party Partnerships:** Description of third-party partnerships with your organization, including parent or subsidiary relationships. Any partner, subsidiary or other entity to be used in providing any services in the RFP must be specifically identified.

**E. Compatibility:** Identify and discuss in detail any software or compatibility issues relating to the service component listed in the Scope of Services in ¶1.4. Any required accommodation necessary to perform a service component should be discussed in detail.

**F. Terms, Conditions, and Fee Proposal:**

- Provide sample of any standardized financial Advisory agreements or other account origination documents and identify whether the terms and conditions of such documents are negotiable.

**G. References:** Provide a minimum of three (3) customers for whom Respondent has provided similar financial services. Include the following information for each customer:

- Name and address of customer;
- Name and telephone number of contact person;

- Summary of the services provided;
- Dates of service; and
- Name of the supervising bank officer assigned to the customer.

The Authority is particularly interested in clients whose water systems are within New York State.

**H. Insurance:** Respondent must provide proof of insurance consistent with the requirements set forth in Exhibit B to this RFP.

**I. Additional Information:** Respondent should include such information necessary for the Authority to review and evaluation its ability to provide the services described in ¶1.4 including, but not limited to, the following information:

- Identify any pending legal actions against Respondent which could interfere with its on-going operations or with services to be provided within its proposal;
- Describe the Respondent’s disaster recovery plan as to how financial advisory services would be continue during a state of emergency or following a security breach or cyberattack including Respondent’s ability to access or recover the Authority’s records that may be lost or destroyed and how often such a disaster recovery plan is tested and updated.
- Such information as requested in the forms attached to this RFP as Exhibit C, relating to the statutory provisions set forth in the Public Authorities Law, the State Finance Law, the Labor Law and other applicable laws of the State of New York.

**J. Respondent Certification:** All Submissions must contain a Respondent Certification, a copy of which is attached to this RFP.

**2.2 Required Copies:** Respondents are required to send one (1) signed original and four (4) copies of their Submissions, along with a PDF version of the Submission, which may be e-mailed. Any Submissions should be delivered to Erie County Water Authority, 295 Main St Rm 350, Buffalo, New York 14203 to the attention of Joyce Tomaka, Comptroller. All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand-delivered shall be directed to the attention of Joyce Tomaka in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: ***“Submission to RFP for Financial Advisory Services.”***

## 2.3 Timeline

The schedule of events for this RFP is anticipated to proceed as follows:

<b>April 28, 2022</b>	Distributing Request for Proposals (RFP)
<b>May 13, 2022</b>	Deadline for submission of written questions to the Authority's designated contact person listed in ¶ 1.6
<b>May 18, 2022</b>	Responses to questions documented as an Addendum to the RFP and mailed to all Respondents who acknowledged receipt of the original RFP
<b>May 31, 2022</b>	RFP submissions due by 5:00 pm EST.

## 2.4 Submission Deadline

The Authority's designated contact person listed in ¶ 1.6 must receive, by mail or email, all RFP Submissions no later than **May 31, 2022, at 5:00 pm**. Proposals received after this time will not be considered and will be returned unopened.

## 2.5 Review and Evaluation

An in-house committee comprised of Authority personnel familiar with the Authority's needs and requirements (the "Evaluation Committee") will review all submissions in response to the RFP and any addenda. When deemed appropriate, the Evaluation Committee may schedule with any Respondent an interview and/or presentation. The Evaluation Committee reserves the right to determine, in its sole discretion, whether any aspect of the information satisfactorily meets the criteria set forth in this Request for Proposal and may seek additional information and clarifications as well as financial information from Respondent.

The final scope of services and schedule of fees will be subject to further negotiation with selected responsive financial advisory firm with a professional service agreement to be executed pending a successful negotiation of terms and conditions and authorization of the Authority's Board of Commissioners. The Authority reserves the right to contract with one or more financial advisory for the services described in ¶1.4

All Respondents will be notified of the selection results. It is anticipated that the selection process will be completed in June, 2022, and that a contract, if any, will be executed in July, 2022.

### **SECTION 3. STATUTORY AND REGULATORY RESTRICTIONS**

**3.1** The Authority is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). When the Authority seeks to procure services by means of a Request for Proposal, the State Finance Law imposes certain restrictions on anyone who may wish to offer goods or services to the Authority as an Offeror, as that term is defined in §§ 139-j(1)(h) and 139-k(1)(h).

**3.2** Pursuant to the State Finance Law, the Authority is also required to make certain findings before making any determinations as to the qualifications and eligibility of those seeking a procurement contract, as that term is defined in State Finance Law §§ 139-j(1)(g) and 139-k(1)(g). Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings of non-responsibility occurring within a 4-year period, the Offeror will be debarred from obtaining procurement contracts with the Authority. Further information about these requirements can be found in §§139–j and 139–k of the New York State Finance Law and the Erie County Water Authority’s Procurement Disclosure Policy.

**3.3** The Respondent prohibits its agents, employees, and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance which might reasonably be interpreted as an attempt to influence the Authority personnel in the conduct of their official duties. The Respondent or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the Authority personnel in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

**3.4** Nothing contained in any Submission responding to this RFP should be construed to render either the Authority or the Respondent, an owner, member, officer, partner, employee, or agent of the other, nor shall either party have authority to bind the other in any manner. Respondent shall remain an independent entity responsible for its own actions.

**3.5** The Respondent may not propose in its Submission any provisions making the Respondent, or its employees an employee, servant or agent of the Authority or as being entitled to participate in any plans, arrangements, or distributions of the Authority.

**3.6** In making a Submission responding to this RFP, the Respondent represents and warrants that it has complied with all applicable federal, state, and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. If requested, the Respondent agrees to furnish copies of documentation to the

Authority evidencing its compliance with such laws. The Respondent further represents and warrants that it has reported all applicable federal, state, and local taxes to the appropriate taxing authorities.

**RESPONDENT CERTIFICATION**

I have carefully examined the Request for Proposals (RFP) and any other documents accompanying or made a part of this Request for Proposals and agree to abide by all conditions of this RFP.

I certify that all information contained in my response is truthful to the best of my knowledge and belief and I am duly authorized to submit this response on behalf of my firm.

I further certify that this response to the RFP is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a response to the RFP for the same product or service; and that the undersigned executed this Respondent's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

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NAME OF BUSINESS

BY:

---

SIGNATURE

---

NAME & TITLE, TYPED OR PRINTED

---

MAILING ADDRESS

---

CITY, STATE, ZIP CODE

(\_\_\_\_) \_\_\_\_\_  
TELEPHONE NUMBER

**EXHIBIT A**

**INVESTMENT GUIDELINES  
FOR THE ERIE COUNTY WATER  
AUTHORITY**

# **ERIE COUNTY WATER AUTHORITY INVESTMENT GUIDELINES**

## **SCOPE**

These investment guidelines apply to all moneys and other financial resources of the Erie County Water Authority (Authority) available for investment, and have been established pursuant to the following:

Public Authorities Law Article 5 §1055,  
Public Authorities Law Article 9 §2925, and  
Erie County Water Authority Bond Covenants

## **OBJECTIVES**

The primary objectives of the Authority's investment activities are, in priority order,

- to conform with all applicable federal, state, and other legal requirements
- to adequately safeguard principal
- to provide sufficient liquidity to meet all operating requirements, and
- to obtain a reasonable rate of return.

## **DELEGATION OF AUTHORITY**

The Authority's Board has delegated responsibility for administration of the investment program to the Chief Financial Officer, who shall establish procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on a data base or records incorporating description and amounts of investments, transaction dates, and other relevant information and regulate the activities of subordinate employees.

## **PRUDENCE**

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the Erie County Water Authority to operate effectively.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.



## **DIVERSIFICATION**

It is the policy of the Erie County Water Authority to diversify its deposits and investments by financial institution, by investment instrument, and by maturity scheduling.

## **LIQUIDITY**

Unrestricted cash will be maintained at one hundred eighty (180) days of budgeted operating expenses. These funds will be invested in accordance with the Authority's Investment Guidelines.

The Authority will maintain operating cash of \$4 million, which will be available on a daily basis. These funds should be in the Authority's NOW accounts or money market accounts for easy access. If the Authority is aware of an event for which additional operating funds will be required, this amount can be adjusted.

The remaining unrestricted cash may be invested until it is needed for operating expenditures. A cash flow schedule should be reviewed to determine how long the funds may be invested. Depending on the economic environment, it may be advantageous to invest these funds on a short-term basis. They can then be reinvested periodically until the funds are required.

## **INTERNAL CONTROLS**

The Chief Financial Officer is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization and recorded properly, and are managed in compliance with applicable laws and regulations.

## **DESIGNATION OF DEPOSITORIES**

The banks and trust companies authorized for the deposit of monies are:

Bank of America  
Evans Bank, NA  
JP Morgan Chase Bank  
JPMorgan Securities LLC  
Key Bank of New York  
M&T Bank  
Manufacturers & Traders Trust Company/Wilmington Trust, NA  
UBS Financial Services Inc.

## **COLLATERALIZING OF DEPOSITS**

All deposits of the Authority, including certificates of deposit and special time deposits, in

excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured by a pledge of eligible securities with an aggregate market value equal to the aggregate amount of deposits from the categories designated in Appendix A to the guidelines.

Alternately, deposits may be collateralized by an irrevocable letter of credit issued in favor of the Authority by a federal home loan bank whose commercial paper and other unsecured short-term debt obligations are rated in the highest rating category by at least one nationally recognized statistical rating organization, as security for the payment of 100 percent of the aggregate amount of deposits and the agreed-upon interest, if any.

At the time investments are made collateral requirements are established to protect the underlying investments. The collateral is monitored daily until the extinguishment of the investments.

Current market values will be reviewed monthly.

## **SAFEKEEPING AND COLLATERALIZATION**

Eligible securities used for collateralizing deposits shall be held by a third-party bank or trust company subject to written security and custodial agreements.

The security agreement shall provide those eligible securities are being pledged to secure the Authority's deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted, or released and the events which will enable the Authority to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the Authority, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Erie County Water Authority or its custodial bank.

The custodial agreement shall provide those securities held by the bank or trust company, as agent of and custodian for the Authority, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution, or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the Authority a perfected interest in the securities.

Securities issued in the Authority's name, for example commercial paper, will also be held by the custodian. These securities may not be released without prior written approval of the Authority.

## **PERMITTED INVESTMENTS**

All investments of the Authority shall comply with:

- The Authority's bond covenants,
  - ✓ Fourth General Water Revenue Bond Resolution dated July 9, 1992
  - ✓ 2003 Supplemental Resolution dated October 31, 2002 (Series 2003F)
  - ✓ 2016 Supplemental Resolution dated August 30, 2016 (Series 2016)
  - ✓ 2018 Supplemental Resolution dated June 28, 2018 (Series 2018)
  - ✓ 2021 Supplemental Resolution dated October 28, 2021 (Series 2021 WIFIA Bond)
- All applicable federal and state laws, and
- Recommendations of the New York State Comptroller.

The Authority's Board authorizes the Chief Financial Officer to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs as follows:

- a. Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.
- b. Obligations of any agency, subdivision, department division or instrumentality of the United States of America; or obligations fully guaranteed as to interest and principal by any agency, subdivision, department, division, or instrumentality of the United States of America.
- c. New Housing Authority Bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America or any agency thereof; or Project Notes issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America or any agency thereof.
- d. Direct obligations of, or obligations guaranteed as to principal and interest by, any state or direct obligations of any agency or public authority thereof, provided such obligations are rated, at the time of purchase, in one of the two highest rating categories by at least two nationally recognized Bond Rating Agencies.
- e. Bank time deposits evidenced by certificates of deposit and bankers' acceptances issued by any bank or trust company (which may include the Trustee with respect to any series of the Authority's bonds) which is a member of the Federal Deposit Insurance Corporation, provided that such time deposits and bankers' acceptance (a) do not exceed at any one time in the aggregate five percent (5%) of the total of the capital and surplus of such bank or trust company, or (b) are secured by obligations described in items (1), (2), or (3) above, which such obligations at all times have a market value (exclusive of accrued interest) at least equal to such time deposits so secured.

- f. Repurchase agreements with any bank or trust company (which may include the Trustee with respect to any series of the Authority's bonds), which is a member of the Federal Deposit Insurance Corporation, which such agreements are secured by securities which are obligations described in items (1), (2) or (3) above provided that each such repurchase agreement (a) is in commercially reasonable form and is for a commercially reasonable period, and (b) results in transfer to the Trustee for the Authority's bonds or the Authority of legal title to, or the grant to the Trustee for the Authority's bonds or the Authority of a prior perfected security interest in, identified securities referred to in items (1), (2) or (3) above which are free and clear of any claims by third parties and are segregated in a custodial or trust account held by a third party (other than the repurchaser) as the agent solely of, or in trust solely for the benefit of, the Trustee for the Authority's bonds or the Authority; provided that such securities acquired pursuant to such repurchase agreements shall be valued at the lower of the then current market value of such securities or the repurchase price thereof set forth in the applicable repurchase agreement; and provided that such repurchase agreements comply with the restrictions specified in Section XIV of these guidelines.
- g. Obligations consisting of notes, bonds and debentures which are direct obligations of a solvent corporation existing under the laws of the United States or any state thereof, provided that such investments shall be rated in the two highest rating categories established by at least two nationally recognized bond rating agencies.
- h. Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's Investor Services, and which matures not more than 270 days after the date of purchase.
- i. Certificates or other obligations that evidence ownership of the right to payments of principal of or interest on obligations of the United States of America or any state of the United States of America or any political subdivision thereof or any agency or instrumentality of the United States of America or any state or political subdivision, provided that such obligations shall be held in trust by a bank or trust company or a national banking association meeting the requirements for a Trustee under the Authority's Bond Resolutions, and provided further that, in the case of certificates or other obligations of a state or political subdivision, the payments of all principal of and interest on such certificates or such obligations shall be fully insured or unconditionally guaranteed by, or otherwise unconditionally payable pursuant to a credit support arrangement provided by, one or more financial institutions or insurance companies or associations which shall be rated in the highest rating category by Moody's Investors Service, Inc. and Standard & Poor's Corporation, or, in the case of an insurer providing municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bonds, such insurance policy shall result in such municipal bonds being rated in the highest rating category by Moody's Investors Service, Inc. and Standard & Poor's Corporation.
- j. Investment agreements rated, or the issuer of which is rated, in one of the two highest rating categories by at least two nationally recognized rating agencies and if rated by

Moody's Investors Service or Standard & Poor's Corporation such investment agreements or the long-term unsecured debt obligations of the issuer thereof must be rated in one of the two highest rating categories by the respective agency rating such investment agreements.

- k. Bonds, notes, or other evidence of indebtedness rated "AA+" by Standard and Poor's Corporation and "Aaa" by Moody's Investor Services issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) with remaining maturities not exceeding three years.
- l. Investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Corporation.
- m. Such other investments with respect to any Series of Bonds as shall be specified in the supplemental resolution pursuant to which such Series of Bonds was issued.

All investment obligations shall be payable or redeemable at the option of the Erie County Water Authority within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the Erie County Water Authority within two years of the date of purchase.

#### **AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS**

The Authority shall maintain a list of financial institutions and dealers approved for investment purposes. All financial institutions with which the Authority conducts business must be credit worthy. Banks shall provide their most recent Consolidated Report of Condition (Call Report) at the request of the Erie County Water Authority. Security dealers not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank, as primary dealers. The Chief Financial Officer is responsible for evaluating the financial position and maintaining a listing of proposed depositories, trading partners and custodians. Such listing shall be evaluated at least annually.

If the Authority deems it advisable to retain an investment banker, broker, agent, dealer or other investment advisor or agent to transact business with the Authority, it shall establish criteria for said individuals or firms covering the quality, reliability, experience, capitalization, size, and any other factors that at the time the Authority feels pertinent before qualifying said firm to transact business with the Authority.

The Authority must have discretion over all investment transactions and must be supplied with adequate documentation for each transaction. All agreements must comply with the Investment Advisor's Act of 1940 and applicable New York State and Federal laws. In addition, a separate agreement will be entered into with a third-party custodian to hold all securities purchased by the investment advisor.

See Exhibit I for a list of authorized financial institutions and dealers.

## **PURCHASE OF INVESTMENTS**

The Authority shall enter into a written contract covering each investment made by the Authority unless it shall determine by resolution that a written contract is not practical or that written contracts are not a regular business practice with respect to any specific investment or transaction.

The Chief Financial Officer is authorized to contract for the purchase of investments:

- Directly, including through a repurchase agreement, from an authorized trading partner.
- By participation in a cooperative investment program with another authorized governmental entity pursuant to Section 1054 of the Public Authorities Law where the specific program has been authorized by the Board.
- By utilizing an ongoing investment program with an authorized trading partner pursuant to a contract authorized by the Board.

All investments in U.S. Government Securities shall be kept in book-entry form, and the securities may be retained by the banking institution involved. In such instances, the Authority shall have a duly executed agreement passing title to said securities to the Authority.

The written contract shall fully secure the Authority's financial interest in each investment except where these guidelines describe circumstances where the Authority's financial interest in any investment may be less than fully secured or collateralized.

Said contract shall recite the type and amount of collateral or insurance for each investment.

It shall establish a method of valuation of the collateral at not less than market value. The Chief Financial Officer, or someone delegated to act in his behalf, shall monitor the valuation of the collateral security not less than once every six (6) months and keep a record setting forth the valuation of said collateral security.

All purchased obligations, unless registered or inscribed in the name of the Authority, shall be purchased through, delivered to, and held in the custody of a bank or trust company. Such obligations shall be purchased, sold, or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the Authority by the bank or trust company. Any obligation held in the custody of a bank or trust company shall be held pursuant to a written custodial agreement as described in General Municipal Law, §10.

The custodial agreement shall provide those securities held by the bank or trust company, as agent of and custodian for the Authority, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities.

The agreement shall describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions necessary to provide the Authority a perfected interest in the securities.

## **REPURCHASE AGREEMENTS**

Repurchase agreements are authorized subject to the following restrictions:

- All repurchase agreements must be entered into subject to a Master Repurchase Agreement.
- Trading partners are limited to banks or trust companies authorized to do business in New York State and primary reporting dealers.
- Obligations shall be limited to obligations of the United States of America and obligations guaranteed by agencies of the United States of America.
- No substitution of securities will be allowed.
- The custodian shall be a party other than the trading partner.

Maximum dollars to be invested with each bank or Trust Company is \$30 million except for proceeds received from a banking institution or state authority in relation to issuance of Authority bonds.

## **LOCKBOX**

A written contract must be entered into for lockbox services.

Customer water bill payments processed by a lockbox will be deposited into a Water System Revenue Account. This account will be collateralized in accordance with these guidelines.

## **ON-LINE BANKING SERVICE AGREEMENTS**

The customer water bill payments made on-line with a service organization acting on behalf of the paying bank will be electronically transferred into the Water System Revenue Account. In addition, customer deposits will be transferred into the Customer Deposit Account. These accounts will be collateralized in accordance with these guidelines.

A written contract must be entered into for the transmission of customer payments made on-line.

## **REPORTING**

The Chief Financial Officer of the Authority shall report to the Authority's Board on the investments of the Authority not less than once each quarter.

The independent accounting firm retained by the Authority to perform the yearly audit of the Authority's books and records shall audit the investments of the Authority and make its report available to the members of the Authority at the time the members conduct the annual review and approval of these investment guidelines.

The Chief Financial Officer shall annually prepare for approval by resolution of the Authority an investment report which shall include these investment guidelines, any amendments to such guidelines since the last investment report, the results of the annual independent audit of the schedule of investments, and a list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer or advisor rendering investment associated services to the Authority since the last investment report. This investment report may be made a part of the Authority's annual report to the Authorities Budget Office.



APPENDIX A  
Schedule of Eligible Securities for Collateralization of Deposits

- Obligations issued, or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, an agency thereof or a United States government sponsored corporation.
- Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.
- Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the Market Value of the obligation that represents the amount of the insurance or guaranty.
- Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of such State or obligations of any public benefit corporation which under a specific State statute may be accepted as security for deposit of public moneys.
- Currency of the United State of America which constitutes legal tender

## **EXHIBIT I**

### Authorized Financial Institutions and Dealers:

Bank of America  
Bank of New York Mellon  
Capital Markets Advisors, LLC  
Evans Bank, N.A.  
Federal Home Loan Bank of New York  
Fitch Ratings  
Jefferies LLC  
JPMorgan Chase Bank  
JPMorgan Securities LLC  
Key Bank of New York  
M&T Bank  
Manufacturers & Traders Trust Company/Wilmington Trust, NA  
Moody's Investors Service  
New York State Environment Facilities Corporation  
Paymentus Corporation  
Standard & Poor's Rating Services  
UBS Financial Services Inc.  
United States Treasury

EXHIBIT B  
INSURANCE REQUIREMENTS

**INSURANCE REQUIREMENTS**  
**Financial Advisory Services**  
**PROJECT NO. 202200071**

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the Authority). If a service or project, in the opinion of the Authority, represents an unusual or exceptional risk, the Authority may establish additional insurance requirements for that service or project. All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the lifetime use of vendors "Product" and/or applicable statute of limitation. These requirements include but are not limited to the minimum insurance requirements.

**Insurance Requirements:**

**a. Workers Compensation:**

- Part 1: Workers Compensation: Statutory
- Part 2: Employers Liability: \$1,000,000.

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2

**b. New York Disability Benefits Liability:** Statutory coverage if New York State domiciled employees are used.

**c. Commercial General Liability:**

- \$2,000,000. General Aggregate
- \$2,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- Erie County Water Authority to be scheduled as an Additional Insured for both on-going and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Insurance to be primary and non-contributory

**d. Automobile Liability:**

- \$1,000,000. Each Accident
- Erie County Water Authority to be scheduled as an Additional Insured.

**e. Umbrella Liability:**

- \$1,000,000. Each Occurrence
- \$1,000,000. Aggregate

- Erie County Water Authority to be scheduled as an Additional Insured

**f. Financial Institutions Professional/Management Liability:**

- \$5,000,000. Per Claim
- \$5,000,000. Aggregate

**g. Financial Institutions Fidelity Bond (including Theft of Client Property)**

- \$5,000,000 Per Claim

Certificates of Insurance to be provided to the Authority prior to start of work as follows:

ACORD 25 including copy of Additional Insured Endorsement

Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract. Renewals of Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be received by the Authority 30 days prior to the expiration of the insurance policy period.

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to the Authority prior to the award of contract. Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than "A-" with a Financial Strength Code (FSC) of at least VII. The professional service provider shall name the Authority, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies. Any liability coverage on a "claims made" basis should be designated as such on the Certificate of Insurance. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

To avoid confusion with similar insurance company names and to properly identify the insurance company, please make sure that the insurer's National Association of Insurance Commissioners (N.A.I.C.) identifying number or A. M. Best identifying

number appears on the Certificate of Insurance. Also, at the top of the Certificate of Insurance, please list the project number.

Acceptance of a Certificate of Insurance and/or approval by the Authority shall not be construed to relieve the outside vendor of any obligations, responsibilities, or liabilities.

Certificates of Insurance should be e-mailed to [mmusarra@ecwa.org](mailto:mmusarra@ecwa.org) or mailed to Ms. Molly Jo Musarra, Claim Representative/Risk Manager Erie County Water Authority, 295 Main Street – Room 350, Buffalo, New York 14203-2494, or If you have any questions you can contact Ms. Musarra by e-mail or phone (716) 849-8465.

EXHIBIT C  
STATUTORY COMPLIANCE FORMS

**NON-COLLUSIVE BIDDING CERTIFICATION**  
**as mandated by Public Authority Law § 2878**

By submission of this bid or proposal, each bidder/respondent and each person signing on behalf of any bidder/respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- (1) The prices in this bid or proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/respondent or with any competitor; and
- (2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder/respondent and will not knowingly be disclosed by the bidder/respondent prior to opening, directly or indirectly, to any other bidder/respondent or to any competitor; and
- (3) No attempt has been made or will be made by the bidder/respondent to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

**NOTICE**

(Penal Law § 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

**BID NOT ACCEPTABLE WITHOUT FOLLOWING CERTIFICATION:**

Affirmed under penalty of perjury this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_

FIRM NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_ ZIP \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

TYPED NAME OF AUTHORIZED SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_ TELEPHONE No. \_\_\_\_\_



**SECTION 2875 OF THE PUBLIC AUTHORITIES LAW**

**§2875. GROUND FOR CANCELLATION OF CONTRACT BY PUBLIC AUTHORITY.**

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any public authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

- (a) Such person, and any firm, partnership, or corporation of which he is a member, partner, director, or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that
- (b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation termination shall be paid.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

\_\_\_\_\_  
(Name of Individual, Partnership or Corporation)

By \_\_\_\_\_  
(Person authorized to sign)

(SEAL)

## SECTION 2876 OF THE PUBLIC AUTHORITIES LAW

### §2876. DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-six hundred three of this article.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury,

head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

\_\_\_\_\_  
(Name of Individual, Partnership or Corporation)

By \_\_\_\_\_  
(Person authorized to sign)

(SEAL)

## **FORMS A, B, and C**

### SECTION 139 OF STATE FINANCE LAW

Pursuant to State Finance Law §§139–j and 139–k, this Invitation to Bid includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers, through final award and approval of the Procurement Contract by the Governmental Entity. The designated contact is identified in the Notice to Bidders. Governmental Entity employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in §§139–j and 139–k of the New York State Finance Law and the Erie County Water Authority’s Procurement Disclosure Policy.

Form A - Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law.

Form B - Offerer’s Certification of Compliance with State Finance Law.

Form C - Offerer’s Disclosure of Prior Non-Responsibility Determinations.

Contract Termination Provision.

**FORM A**

**Offerer's Affirmation of Understanding of and Agreement Pursuant to State  
Finance Law §139-j(3) and §139-j(6)(b)**

**Instructions:**

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §139-j and §139-k. It is required that this affirmation be obtained as early as possible in the procurement process, but no later than when the Offerer submits its proposal.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**FORM B**

**Offerer's Certification of Compliance  
With State Finance Law §139-k(5)**

**Instructions:**

A Governmental Entity must obtain the required Certification that the information is complete, true, and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the Certification and provide it to the procuring Governmental Entity. It is required that the Certification be obtained as early as possible in the process, but no later than when an Offerer submits its proposal.

**Offerer Certification:**

*I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true, and accurate.*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

## **FORM C**

### **Offerer's Disclosure of Prior Non-Responsibility Determinations**

#### **Background:**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j; or (b) the intentional provision of false or incomplete information to a Government Entity.

The terms "Offerer" and "Governmental Entity" are defined in State Finance Law §139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

#### **Instructions:**

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement no later than when the Offerer submits its proposal.

**FORM C (Continued)**

**Offerer's Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):
- No                      Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
- No                      Yes
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle)                      No                      Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)





## **Contract Termination Provision**

### **Instructions:**

A Contract Termination Provision will be included in each Procurement Contract governed by State Finance Law §139-k. New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing the Governmental Entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. “Government Entity” and “procurement contract” are defined in State Finance Law §139-k(l).

This required clause will be included in a covered procurement contract.

A sample of the Termination Provision is included below. If a contract is terminated in accordance with State Finance Law §139-k(5), the Governmental Entity is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

### **Sample Contract Termination Provision**

<p>The Governmental Entity reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Governmental Entity may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.</p>
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**OFFERER’S STATEMENT REGARDING PREVENTION OF  
UNLAWFUL DISCRIMINATORY PRACTICES**

The Erie County Water Authority (the “Authority”), as an employer in New York State, is subject to the Human Rights Law, codified as Executive Law §290, *et. seq.*, and Labor Law §201-g. The Authority seeks to provide a work environment that is free from unlawful discriminatory practices as they are defined in Executive Law §296, as well as from inappropriate harassing conduct even if not deemed unlawful, to its employees, contractors, subcontractors, vendors, consultants, and any other person providing services on Authority premises. Pursuant to the Human Rights Law, it shall be unlawful to discriminate against an individual, or to subject an individual to harassment, due to age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence. Accordingly, the Authority requires that any Offeror of a proposal or bid, agree to sign the following statement regarding unlawful discriminatory practices, including, but not limited to sexual harassment, under penalty of perjury. This statement should be provided to the Authority as early as possible in the procurement process, but not later than at the time of execution of a contract with the Authority. Failure to agree to sign the statement may result in the Authority deeming the bid or proposal withdrawn by the Offerer.

**Offerer Statement:**

*I certify, under penalty of perjury, that the following statements are accurate:*

- *Offerer is aware of its obligations under the Human Rights Law (Executive Law §290, et. seq.*
- *Offerer complies with the provisions of Executive Law §290, et. seq., including Executive Law §296, and does not permit unlawful discriminatory practices or harassment based on an individual’s age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence in its workplace.*
- *Offerer complies with the provisions of Labor Law §201-g, has implemented a written policy addressing sexual harassment in the workplace which meets the minimum standards of Labor Law §201-g, and provides annual sexual harassment prevention training to all of its employees.*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

---

## Financial Advisory Services

**Bernard P. Donegan, Inc**  
345 Woodcliff Dr, 2nd Floor  
Fairport, NY 14450

**BLX Group**  
51 W 52nd St  
New York, NY 10019

**Capital Markets Advisors, LLC**  
4211 N. Buffalo Rd, Suite 19  
Orchard Park, NY 14127

**CE Jones Consulting LLC**  
75 Old Highway  
Hillsdale, NY 12529

**Drexel Hamilton**  
77 Water Street  
New York, NY 10005

**Fiscal Advisors & Marketing, Inc**  
250 S. Clinton St, Ste 502  
Syracuse, NY 13202

**Janney Montgomery Scott LLC**  
One PPG PL, Ste 2200  
Pittsburgh, PA 15222

**Municipal Solutions, Inc**  
62 Main St  
LeRoy, NY 14482

**Munistat Services, Inc.**  
12 Roosevelt Ave,  
Port Jefferson Station, NY 11776

**PFM Financial Adviros LLC**  
368 9th Avenue  
New York, NY 10001

**Raftelis**  
227 West Trade St  
Charlotte, NC 28202

**Roosevelt & Cross, Inc**  
55 Broadway, 22nd Fl  
New York, NY 10006